

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONTINA LAVERNE CARTER,

Defendant-Appellant.

UNPUBLISHED

November 22, 2011

No. 299320

Wayne Circuit Court

LC No. 10-000810-FH

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Defendant appeals as of right her bench conviction of voluntary manslaughter. See MCL 750.321. The trial court sentenced defendant to serve 3 to 15 years in prison for her conviction. Because we conclude that there were no errors warranting relief, we affirm.

The evidence showed that defendant had a romantic relationship with Jerry Houston with whom she shared a residence. On the evening in question, Houston had been drinking and he and defendant began to argue in their bedroom. At some point during the argument, defendant's son came into the bedroom and Houston struck him and they both went into the hallway. Defendant then left, retrieved a kitchen knife, returned to the hallway, and stabbed Houston several times. Houston died from his injuries.

On appeal, defendant argues that the trial court erred when it found that the evidence did not support her claim of self-defense. Defendant contends that the evidence plainly showed that she honestly and reasonably believed that Houston posed an imminent threat to her life or her son's life, or that he posed a threat of serious bodily harm to her or her son. For that reason, she maintains that she had the right to resort to deadly force. She also contends that the trial court improperly applied the law of self-defense and the "duty to retreat" rule.

This Court reviews a trial court's findings of fact at a bench trial for clear error. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). A finding is clearly erroneous if this Court "is left with a definite and firm conviction that a mistake has been made." *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002). However, in reviewing a trial court's bench findings, this Court will defer to the trial court's "special opportunity" to "judge the credibility of the witnesses who appeared before it." MCR 2.613(C). In rendering its findings after a bench trial, the court is required to provide enough information to demonstrate that it was "aware of the factual issues and correctly applied the law." *People v Wardlaw*, 190 Mich App 318, 321; 475

NW2d 387 (1991). This court reviews de novo the trial court's conclusions of law. *People v Lanzo Construction Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006).

A person may use deadly force to defend himself or herself from another where the person acting in self-defense “honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *People v Roper*, 286 Mich App 77, 86; 777 NW2d 483 (2009), quoting *People v Heflin*, 434 Mich 482, 502; 456 Nw2d 10 (1990). However, a person is not entitled to immediately resort to deadly force in every altercation; rather, a person may only use an amount of force that is necessary to defend himself or herself. See *Roper*, 286 Mich App at 88.

At trial, the court heard testimony by three officers, reviewed defendant's videotaped confession, viewed photographs from the scene of the homicide, considered the autopsy report, and listened to the testimony of defendant and her son. The evidence supported the court's finding that the incident started when Houston slapped defendant once. There was evidence that defendant went to the kitchen and grabbed a knife immediately after seeing Houston punch her son in the face. Defendant then stabbed him three times in the back. After Houston turned, defendant stabbed him in the chest causing his death. During the entire incident Houston was unarmed and so highly intoxicated that he could not maintain his balance.

On this evidence, the trial court could find that defendant did not honestly and reasonably believe that she or her son was in danger of serious bodily harm or death at Houston's hands. Further, it could find that defendant's resort to deadly force was excessive and unreasonable under the circumstances. Although defendant stated that Houston's fists were balled when he turned to her, her testimony on this had changed and the trial court could reasonably conclude that this version lacked credibility. And we will not second-guess the trial court's credibility assessments. MCR 2.613(C). On this record, we are not left with “definite and firm conviction” that the trial court made a clear error in assessing defendant's perception of the threat that Houston posed or in finding defendant's actions were excessive and unreasonable.

Defendant also argues that the trial court incorrectly placed the burden to prove self-defense on defendant. The prosecution has the burden of disproving self-defense beyond a reasonable doubt. *People v Dupree*, 486 Mich 693, 697; 788 NW2d 399 (2010). Although the trial court did not make an explicit finding, it implicitly found that the prosecution had met its burden of proof on self-defense. In making its findings, the trial court is not required to state with particularity every finding. MCR 2.517(A); *People v Jackson*, 390 Mich 621, 627; 212 NW2d 918 (1973). The court must, however, provide enough detail to allow the reviewing court to follow the connections drawn between the factual findings and the legal conclusions. *Wardlaw*, 190 Mich App at 321.

After making its factual findings, the trial court found that the circumstances did not support that defendant acted in self-defense. And, therefore, found that the prosecution proved beyond a reasonable doubt that defendant committed voluntary manslaughter. Thus, the court implicitly found that the prosecution met its burden to disprove self-defense beyond a reasonable doubt by relying on the evidence that the prosecution provided in making its factual findings and in concluding that the defense of self-defense was inapplicable. Nothing in the record suggests that it placed the burden to prove self-defense on defendant. The court reviewed the

prosecution's exhibits, heard the testimony of three officers regarding the homicide and viewed defendant's taped interview. It relied on this evidence in determining that Houston slapped defendant once, in comparison to the multiple times that defendant testified to at trial. The trial court also relied on this evidence in finding that defendant went for the kitchen knife after seeing Houston punch her son and then immediately stabbed him after she returned. The trial court also incorporated the prosecution's evidence that: (1) at the time of the autopsy Houston had a high level of alcohol in his system; (2) testimony that defendant stated that Houston was visibly intoxicated prior to the homicide resulting in him having bad balance; and, (3) Houston was unarmed, which cumulatively shows that Houston did not pose a serious threat to defendant or her son. For these reasons, we conclude that the trial court provided enough facts and analysis to demonstrate that it understood the prosecution's burden and decided it accordingly. Hence, on this record, we cannot conclude that the trial court misapplied the law of self-defense.

Next, defendant argues that the trial court misapplied the "duty to retreat" rule. Under Michigan law, a person has no duty to retreat when attacked in her own home. *People v Riddle*, 467 Mich 116, 134; 649 NW2d 30 (2002).

In its decision, the trial court found that when Houston turned to defendant he "would have been further debilitated because of the three stab wounds that he had sustained beside his state of intoxication and rather than calling the police or asking for some assistance, [defendant] plunged this knife into Mr. Houston's chest causing his death." Defendant argues that this statement demonstrates that the court incorrectly found that defendant had the duty to retreat. We do not agree that this statement shows that the trial court misunderstood the applicable law. The court made these comments in connection with assessing whether force was objectively reasonable and in proportion to the perceived threat of injury or harm. It did not state that defendant had a duty to retreat. Rather, in weighing defendant's claim of self-defense, the court focused on the fact that defendant did not yell for assistance or otherwise act as one might expect under the circumstances. In concluding that defendant's actions were not taken in self-defense, the court also took into consideration that Houston was intoxicated and debilitated by three stab wounds prior to the fatal stab. Defendant has failed to overcome the presumption that the trial court understood and correctly applied the law of self-defense. See *People v Sherman-Huffman*, 466 Mich 39, 43; 642 NW2d 339 (2002).

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell